91-1137

Supreme Court, U.S.
FILED
NOV 3 1991

No._____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

WALLACE LIN,
Petitioner
v.
SECURITIES & EXCHANGE COMMISSION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WALLACE LIN, *pro se*
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QUESTION PRESENTED

Whether disciplinary action against Petitioner requires reversal where voluminous evidence on record below proved that Petitioner was totally innocent of the trumped-up charges against him but was a victim of relentless vendetta and frame-up, and where said evidence further proved that said disciplinary action was unilaterally procured without notice and through willful and calculated deprivations and denials of Petitioner's various due process rights?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Wallace Lin and Respondent Securities & Exchange Commission ("S.E.C.").

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

WALLACE LIN,
Petitioner
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SECURITIES & EXCHANGE COMMISSION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner Wallace Lin respectfully prays that a writ of certiorari issue to review the actions against him as affirmed by the United States Court of Appeals for the Ninth Circuit.

ACTIONS BELOW

The Order of the Court of Appeals for the Ninth Circuit of August 5, 1991 and related actions below is reprinted in the APPENDIX hereto, pp.1a -- 20a, *infra*.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. 1291 and 15 U.S.C. 78y(a)(1), and the U.S. Constitution, Petitioner LIN sought review by the Ninth Circuit of Respondent S.E.C.'s affirmation of the disciplinary action against him by the New York Stock Exchange ("NYSE"). See APPENDIX, p.8a, *infra*. The Ninth Circuit affirmed

without oral argument. See APPENDIX, p.2a, *infra*. Petitioner timely petitioned for rehearing with suggestion for rehearing *en banc*. Rehearing was denied on August 5, 1991. See APPENDIX, p.1a, *infra*.

The jurisdiction of this Court to review the actions of the Ninth Circuit is invoked under 28 U.S.C. 1254(1).

PRELIMINARY STATEMENT

There are those who subscribe to the view that the rights of the individual must be sacrificed in order that public confidence in powerful institutions, private and public, not be deflated by the expose of misconduct or errors. Such, however, is politics, not justice.

There are, of course, many lofty legal principles and precedents in American law that in theory would be uniformly applied through the legal process to result in justice to all citizens without regard to one's race, color, socio-economic status and other factors. As Petitioner has discovered through personal experience, the reality of the American legal process can be quite contrary to such expectations. Justice can indeed be highly elusive as a result of laws being selectively applied or ignored, and facts and evidence being glossed over, distorted or cast aside, and the case written up and reported differently from reality, whether to sustain a politically expedient position or to advance an unrevealed partisan interest.

The purpose of this Petition is multi-fold, not the least of which is to further understand the reality of justice in America, to document a gross injustice and Petitioner LIN's efforts for vindication of his rights, and to seek relief from the highest court of this land, that, under the compelling circumstances, is duty-bound to provide it.

FACTUAL BACKGROUND AND STATEMENT OF THE CASE

Petitioner Wallace LIN ("LIN") is an American citizen and a minority of merit and special ability. For example, in a letter dated 12th May, 1976, from Raymond T. Tate, then Deputy Director (for Communications Security) of the National Security Agency ("NSA"), Mr. Tate wrote to Senator Alan Cranston that LIN's communications security measures were "imaginative and well conceived" and that while the acoustic and cryptographic measures being implemented by the NSA "have not all been carried out in precisely the same manner as Mr. LIN describes", LIN's proposals would be further referenced in future improvements. Space does not permit the citation of other important contributions LIN made to the security and welfare of the United States. Space does not permit the citation of other important contributions LIN made to the security and welfare of the United States, including the submission to the NIH a paper in 1972 (a first) advocating the use of acupuncture for treatment of narcotics withdrawal syndrome in narcotics addiction, now found to be most efficacious and cost-effective. Suffice to say that as a result of these and other important contributions, LIN received various written commendations from the NSA, NIH, BNDD and other agencies and organizations.

It was with the same dedication, enthusiasm and spirit of public service that years later in 1983, LIN, still an idealistic and unsophisticated young man, went to work in the investment industry by joining Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MERRILL"), a New York Stock Exchange ("NYSE") member. In the course of working for MERRILL, LIN soon discovered and protested against various institutionalized frauds in MERRILL's investment advisory, operational and accounting practices, which enriched MERRILL at the

expense of its defrauded public customers. After MERRILL persistently refused to return its illicit profits to the aggrieved customers and demanded acquiescence, LIN advised MERRILL that he would report the matter to the S.E.C. Undaunted, MERRILL instead threatened to use its connections at the S.E.C. to harass LIN. LIN was also direly warned that the NYSE and its member firms would blacklist him should he violate the investment industry's unspoken Code of Silence and particularly that MERRILL would pre-emptively "destroy" him first unless he kept quiet about those frauds.

Unwilling to partake in or acquiesce to MERRILL's fraud, LIN left MERRILL to work for Prudential-Bache Securities Inc. ("PRUDENTIAL"). Several days after LIN left MERRILL, and as forewarned by MERRILL, Respondent S.E.C. did spring into action to orchestrate a pretextual and relentless campaign of harassment and persecution against LIN in the guise of "investigation". When LIN brought MERRILL's racketeering frauds to the attention of Respondent S.E.C., the agency refused to investigate, prevent, stop, or remedy the wrongs, but assiduously sought to cover-up with inaction and delay, despite conclusive and voluminous documentary evidence and proof submitted.

While working at PRUDENTIAL, LIN was opposed to various schemes whereby PRUDENTIAL created artificial losses in its customers' accounts to benefit its own in-house accounts. PRUDENTIAL then unjustly retaliated by forbidding LIN from continued successful prospecting of Fortune 500 executives, by demoting him and finally by drastically cutting his salary from $8,000 to $900 per month for two months in a row, thereby rendering LIN unable to continue to work and forcing LIN to resign in protest on February 15, 1985. In his

resignation letter, LIN put PRUDENTIAL on notice that he would seek redress in court.

To provide alibi for its wrongful constructive discharge of LIN, PRUDENTIAL approached two of LIN's customers, in whose joint account PRUDENTIAL had created particularly egregious artificial losses, offering them substantial sums of money in return for their signing perjured affidavits, drafted by PRUDENTIAL's counsel, which alleged totally fabricated and outrageously false and disproved charges and embellishments against LIN. Said perjured and financially procured affidavits were then repeatedly used by PRUDENTIAL, NYSE and Respondent S.E.C. to vilify LIN in concert and to trump-up charges against and to falsely discipline LIN to deter LIN's civil suit against PRUDENTIAL for wrongful termination.

To unConstitutionally deprive LIN of his right to redress in a court of law, PRUDENTIAL threatened LIN that if he did not give up suing PRUDENTIAL, PRUDENTIAL's then CEO George Ball ("BALL") would enlist the aid of his former E.F. Hutton crony, John Shad ("SHAD"), then Chairman of the S.E.C. (SHAD later left SEC to head Drexel, Burnham & Lambert, the junk bond power house), to unleash the might of the S.E.C., on top of that of NYSE, to injure LIN. Like MERRILL, PRUDENTIAL made veiled death threats against LIN and warned LIN that it could easily determine LIN's "fate".

Nonetheless, LIN sued PRUDENTIAL in the California Superior Court for wrongful termination. (SEC Record, docketed and on file with the Ninth Circuit below, hereinafter "SEC Record" or "SEC Rec.", pp.55-65, pp.75-80). PRUDENTIAL then moved to compel LIN to arbitrate all his claims before the NYSE, its umbrella

organization. Simultaneously, and as forewarned by PRUDENTIAL, and acting on behalf of PRUDENTIAL, the NYSE orchestrated an "investigation" against LIN, demanding that LIN respond to trumped-up charges. (SEC Record, p.50)

LIN opposed arbitration before the NYSE and informed the court of PRUDENTIAL and NYSE's conspiracy to use the ruse of "investigation" by its "Enforcement Division" to deprive LIN of a totally impartial forum. (SEC Record, pp.73-74, para. 6, at p.74). By a letter dated September 24, 1985, LIN's counsel William Woodson, III ("WOODSON"), requested but was denied information by NYSE on what must be done to initiate investigation into unlawful acts by PRUDENTIAL (SEC Record, p.53). On October 28, 1985, the trial court denied arbitration of LIN's suit before the NYSE and further ordered that "all proceedings before the New York Stock Exchange are hereby stayed completely". (SEC Record, pp. 84-85, lines 7-9 at p.85, emphasis added.). NYSE, in its reply of October 1, 1985, totally ignored WOODSON's specific request for steps to initiate investigation of PRUDENTIAL's frauds and threatened disciplinary proceeding instead. (SEC Record, p.81). WOODSON replied by his letter of October 30, 1985 and enclosed a copy of aforesaid California Court Order of October 28, 1985. (SEC Record, p.83). As if the aforesaid WOODSON letter with accompanying California Court Order meant nothing, NYSE continued its harassment and unilaterally scheduled a date for LIN to appear in New York. (SEC Record, p.86). WOODSON replied by reminding NYSE of the literal meaning and scope of the aforesaid California Court Order and enclosed another copy of said Order, advising that he would not permit LIN to participate in NYSE's "interview" (SEC Record, p.88).

The advance threat and warning by PRUDENTIAL, showed that the so-called NYSE "interview" was designed to assist PRUDENTIAL and NYSE, acting as an agent for PRUDENTIAL, to ferret out unknown facts from LIN so as to determine how best to frame LIN while avoiding the danger of being seriously contradicted and refuted by the facts and truth. There is therefore the issue, even if there were no California Court Order staying all proceedings before the NYSE, of whether LIN was obligated to assist in his own frame-up and persecution, indeed whether LIN was obligated to supply the rope for his own lynching, particularly when NYSE clearly demonstrated that it had absolutely no intention to investigate wrongdoings of its own prominent members. Additionally, acting on behalf of PRUDENTIAL, NYSE's demands conflicted with the jurisdiction of California court and the valid California Order, which took precedence in time and authority, and which would not only relieve LIN the duty of, but also proscribed LIN's, compliance with such demands. Nonetheless, NYSE persisted and threateningly demanded in essence that LIN violate California Court's clear Order (SEC Record, p.91).

WOODSON wrote NYSE that its threat of retaliation against LIN was totally inappropriate. WOODSON further stated that the entire matter must be litigated in court, not before a partisan NYSE, which smacked of collusion with PRUDENTIAL, its prominent member (SEC Record, p.94).

On May 20, 1987, in response to "Department of Enforcement Charges Against Wallace E. LIN" that LIN received from the NYSE, LIN wrote to NYSE categorically denying all allegations of wrongdoing and demanding assurance from NYSE that it was not in fact acting on behalf of membership interests such as that of

PRUDENTIAL. (SEC Rec. pp.323-328). NYSE was unable to give such assurance and ignored LIN. On September 3, 1987, without prior notice of the hearing to LIN or his counsel WOODSON, NYSE unilaterally and secretly proceeded to discipline LIN *in absentia*, summarily found him guilty of all the trumped-up charges and imposed a stiff fine of $10,000 and a four-year bar from the securities industry, without presenting LIN's categorical denial and without producing any witness or testimony but offering as its sole purported evidence the aforesaid perjured and financially procured affidavits, as LIN later discovered. (SEC Record pp.95-101).

On September 23, 1987, upon learning of NYSE's discipline of LIN for the first time, WOODSON wrote NYSE to request that the case against LIN be re-opened so that LIN could introduce evidence and give testimony. (SEC Rec. pp.229-230). Despite demand, NYSE still refused to let LIN see any purported evidence against him thereby forcing LIN to respond blindfolded, and successfully handicapped LIN from a more effective preparation of his Motion to Re-Open or Set Aside, (SEC Record, pp.267-277).

Upon LIN's repeated protests and demands, on November 18, 1987, and for the first time, LIN was finally allowed by the NYSE to see a copy of the perjured and financially-procured affidavits used against him (SEC Rec. p.278) but this was just hours before NYSE Committee for Review rubber-stamped and affirmed in New York, in a farcical hearing that lasted two minutes (SEC Rec. pp.279-281), and before it was possible for LIN to respond from California.

After his false discipline by the NYSE, LIN ironically then had to appeal the NYSE action to his tormentor,

Respondent S.E.C., as required under federal law and procedure, on December 31, 1987 (SEC Rec. pp.299-314+(missing Exhibits)). LIN filed an additional Supplemental Memorandum on March 4, 1988 (SEC Rec. pp. 358-371). On April 4, 1988, NYSE wrote SEC urging the disregard of Supplemental Memorandum (SEC Rec. pp.376-378) but neither the NYSE nor the SEC saw fit to send LIN a copy of said letter so that LIN could respond to it as a matter of right. In fact, LIN specifically requested of Respondent S.E.C. that "If additional papers are submitted by the NYSE, I request that I be given a copy of same and sufficient time to respond." (SEC Rec. p.9). Respondent S.E.C. ignored said request and LIN only learned of the existence of the aforesaid NYSE letter of April 4, 1988, more than two years later in 1990. LIN also discovered that his favorable and exculpatory "EXHIBITS IN SUPPORT OF AFFIDAVIT & MOTION" submitted along with his affidavit of December 31, 1987, were removed from the S.E.C. Record and spoliated by the S.E.C.. Also not surprisingly, Respondent S.E.C. affirmed the unjust and fraudulent NYSE actions against LIN (SEC Rec. 380-386).

In fact, as forewarned by PRUDENTIAL, Respondent S.E.C., under Chairman SHAD, redoubled its efforts to harass and persecute LIN on behalf of PRUDENTIAL, in the ruse of "investigation", employing bogus frame-up material secretly furnished by PRUDENTIAL. LIN's presentation of documentary proof of PRUDENTIAL and MERRILL's frauds against public customers were ignored and covered-up by Respondent S.E.C which steadfastly refused to investigate and calculatedly took no action whatsoever so that the frauds would become time-barred by the statute of limitations and so that the wrongdoers would become permanently protected.

Only after LIN repeatedly demanded that Respondent S.E.C. provide written assurance to LIN that it was not in truth and in fact acting on behalf of private interests of PRUDENTIAL and MERRILL, did the S.E.C. chose to end its "investigation" ruse against him rather than risk exposure of its false cover. All these blatant private mercenary activities and breaches of public trust by Respondent S.E.C. paralleled the NYSE disciplinary action orchestrated against LIN. Not surprisingly, when LIN appealed the NYSE action against him to Respondent S.E.C., as is procedurally required under federal law, Respondent S.E.C. predictably and unjustly rubber-stamped and affirmed.

LIN thereafter petitioned to the Ninth Circuit for a review of the S.E.C.'s order affirming the NYSE action. The issue of lack of notice to LIN or his counsel WOODSON of the September 3, 1987 NYSE hearing was handled by Respondent S.E.C. in a most unusual manner. On May 14, 1991, just two days before the scheduled May 16, 1991 Ninth Circuit hearing, a bogus predated letter purporting to provide notice was sent by Respondent S.E.C. via EXPRESS MAIL and timely received on May 15, 1991 by the Ninth Circuit, whereas the copy to LIN was deliberately sent by regular mail to arrive late on May 18, 1991, fully two days after the May 16, 1991 Ninth Circuit hearing, so as to prevent LIN from timely submitting a rebuttal and expose before the Ninth Circuit.

Canceling the twice-scheduled oral argument, the Ninth Circuit then affirmed presumably without knowledge of the sham nature of Respondent's aforesaid last minute submission. LIN's timely petition for rehearing with suggestion for rehearing *en banc* was however denied on August 5, 1991. This petition for a Writ of Certiorari to the United States Supreme Court follows.

REASONS FOR GRANTING THE WRIT

Argument And Grounds For Reversal:

LIN respectfully submits that the NYSE disciplinary action against him must be reversed and set aside because:

(A) LIN was totally innocent of the false charges trumped-up against him by the NYSE and PRUDENTIAL:

(1) The sole purported evidence against LIN were two perjured and financially procured affidavits drafted by counsel for PRUDENTIAL and signed by two customers in whose joint account PRUDENTIAL caused heavy losses to benefit its own in-house accounts. Moreover, the voluminous private papers and personal documents of the affiants also independently and unequivocally proved the falsity and perjurious nature of said affidavits and such abundant and conclusive proofs are on record below but which the Ninth Circuit refused to take into account.

(B) LIN was willfully denied various due process rights by the NYSE, acting on PRUDENTIAL's behalf:

(1) The purported NYSE disciplinary hearing of September 3, 1987 was secret, unilateral and without prior notice to LIN or his counsel, as Sixth Amendment due process would require. *United States v. Cronic*, 446 U.S. 648, 654 (1984). NYSE's purported jurisdiction over LIN during the September 3, 1987 hearing was fatally defective for lack of notice to LIN or his counsel and for the resultant violation of LIN's right to the assistance of counsel, *Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986).

(2) Because NYSE contrived a disciplinary action through the pretense of a secret, unilateral "disciplinary hearing" and through the use of perjured affidavits, such action and conduct violated due process. *Mooney v.*

Holohan, 294 U.S. 103, 112 (1935), *Pyle v. Kansas*, 317 U.S. 213, 215-16 (1942).

(3) A disciplinary action obtained by the use of false purported evidence, such as the use of perjured and financially procured affidavits is fundamentally unfair and must be set aside, not only because it involves prosecutorial misconduct, but more importantly because it involves a corruption of the truth-seeking function of the trial process. *United States v. Agurs*, 427 U.S. 97, 103-04 (1976), *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

(4) LIN later further discovered that neither of the affiants nor any other witness were produced at the unnoticed, secret and unilateral *in absentia* hearing orchestrated against him, contrary to the requirement under *Ohio v. Roberts*, 488 U.S. 56, 65 (1980) that such witnesses, unless excused for good cause, be made available and be present for cross-examination and testimony, particularly when PRUDENTIAL and NYSE plotted the whole affair, including its scheduling.

(5) The aforesaid misconduct of the NYSE also denied LIN the rights to confront and cross-examine witnesses and to call witnesses in his behalf which rights have long been recognized as essential to due process. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973), *Greene v. McElroy*, 360 U.S. 474, 496-97 (1959), *Coy v. Iowa*, 487 U.S. 1012, 1018-19 (1988).

(C) LIN was consistently denied a meaningful opportunity to present a defense when he diligently sought to do so:

(1) As the SEC record shows, NYSE deliberately blindfolded LIN by denying LIN access to any purported inculpatory evidence until long after their predetermined

unilateral decision against LIN was rendered and heavy penalty imposed. (SEC Rec. p.278). Both the failure of notice and subsequent assiduous efforts by the NYSE to deny LIN access to purported evidence against him violated the basic notions of fundamental fairness. *California v. Trombetta*, 467 U.S. 479, 485 (1984). LIN was thus denied by NYSE a meaningful opportunity to present a defense in violation of LIN's constitutional and due process rights.

(2) As it turned out, the only purported evidence against LIN were the perjured affidavits which LIN saw for the first time on November 18, 1987, long after the prearranged disciplinary action against LIN had already been secretly and unilaterally rendered by the NYSE on September 3, 1987. Just hours later and before LIN could rebut, the NYSE Committee for Review hastily rubber-stamped in Manhattan the NYSE Enforcement Division's decision against LIN. This fast action ensured absolutely that LIN in California would have neither the time nor the opportunity to meaningfully prepare and present his case and rebuttal at all. (SEC Rec. pp.279-281).

(3) As a result of the above misconduct by NYSE against LIN, LIN was denied the right to a fair trial as mandated by the Due Process Clause of the Fifth Amendment. *United States v. Agurs*, 427 U.S. 97, 107 (1976).

Clearly, as shown above, the failure of notice and the denial of LIN's right to confront purported evidential papers or any witness against him and the timing of various actions by the NYSE, acting on behalf of PRUDENTIAL, were calculated to successfully and grossly deprive and violate LIN's various Constitutional and due process rights.

CONCLUSION

WHEREFORE, for all the foregoing compelling reasons and expose, and if public and the world's trust and respect for our system of justice are to be maintained and elevated, Petitioner LIN respectfully submits that the NYSE disciplinary action against him must be reversed. This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

FILED AUG -5 1991
Cathy A. Catterson, Clerk
U.S. Court of Appeals

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 90-70175
S.E.C. No. 3-6947

WALLACE E. LIN,
Petitioner
v.
SECURITIES AND EXCHANGE COMMISSION,
Respondent

ORDER

Before: GOODWIN, SKOPIL, and CANBY, Circuit Judges.

The panel has voted unanimously to deny the petition for rehearing. Judge Canby has voted to reject the suggestion for rehearing en banc, and Judges Goodwin and Skopil so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed.R.App.P. 35(b).

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

FILED
MAY 20, 1991
CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALLACE E. LIN,
Petitioner,
V.
SECURITIES AND EXCHANGE COMMISSION,
Respondent.

No. 90-70175
S.E.C. No. 3-6947

MEMORANDUM*

Appeal from the Securities and Exchange Commission

Submitted May 16, 1991**
San Francisco; California

Before: GOODWIN, SKOPIL, and CANBY, Circuit Judges.

The New York Stock Exchange (NYSE) sanctioned Wallace E. Lin for misconduct while he was employed at Prudential-Bache Securities, Inc. and for refusing to comply with NYSE requests for information. The

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for submission on the record and briefs and without oral argument. Fed. R. App. P.34(a); Ninth Circuit Rule 34-4.

Securities and Exchange Commission affirmed the NYSE sanctions, and Lin now appeals the SEC order. We affirm.

Lin first argues that the SEC Order requires reversal because the evidence shows that the two affidavits which formed the basis of the charges were false. When this court reviews an order of the SEC, "[t]he findings Of the Commission as to the facts, if supported by substantial evidence, are conclusive." 15 U.S.C. S 78y(a)(4) (1988). Lin's only basis for claiming that the affidavits were false is his own assertion to that effect.Lin's Fn#1 The Commission compared Lin's version of the facts with that of the Leungs and chose to accept the Leungs' version. The Commission's findings of fact are supported by substantial evidence,Lin's Fn#2 and we will not reverse them.,

Lin argues that he was denied the right to confront the evidence against him in the New York Stock Exchange proceeding and so was denied due process. He asserts that a California court order, which stayed arbitration in a proceeding between Lin and Prudential, also stayed the NYSE's investigation and excused him from participating in the hearing. The California stay order was directed solely at an arbitration proceeding

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Lin's Fn#1 This is patently untrue. The record on file below contained voluminous documents and evidence, some of them from none other than Lin's accusers, conclusively proving that LIN was totally innocent of the trumped-up charges against him and that the financially procured affidavits used against Lin were perjured and a product of coached fabrications and embellishments.

Lin's Fn#2 See Lin's Footnote #1, supra

involving Lin and Prudential; the NYSE was not a party to that proceeding before the California court and so was not affected by the stay order.[Lin's Fn#3] The NYSE informed Lin of this fact. Lin was notified of the NYSE hearing[Lin's Fn#4] and was given a full opportunity to attend and confront the evidence presented against him. Where Lin chose to rely on his own interpretation of the stay order and refused to avail himself of the opportunity to confront the evidence against him,[Lin's Fn#5] he cannot now complain that he was denied due process.

Lin next argues that the NYSE withheld evidence from him and released the evidence to him only one day before the NYSE Committee for Review met to hear his appeal. On October 7, 1987, the NYSE notified Lin that his request for rehearing would be considered on November 19, 1987. The record shows that on October 20, 1987, Lin's attorney forwarded to the NYSE a copy of a letter from Lin which included a request for a copy of the evidence used at the hearing.[Lin's Fn#6] On

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Lin's Fn#3 California Court Order stayed "all proceedings before the NYSE" after learning that the NYSE was playing a mercenary role on behalf of and as an agent of Prudential against Lin. Moreover, the Order barred Lin from participating in "all proceeding before the NYSE".

Lin's Fn#4 The evidence on record shows that neither Lin nor his counsel were notified of the September 3, 1987 new hearing date. Not even Lin's accusers showed up, presumably they were also unaware of the date of this unilaterally orchestrated event.

Lin's Fn#5 See Lin's Footnote #4, supra.

Lin's Fn#6 It is noteworthy that the 9th Cir. went on to fault Lin rather than the NYSE for withholding from Lin evidence used

November 13, 1987, knowing that the hearing on his request was scheduled for November 19, Lin sent a second request for the evidence, via regular mail. The NYSE received that letter on November 17, 1987 and immediately sent the requested evidence to Lin via overnight mail.

While the NYSE did not respond promptly to Lin's October 20 request; this failure did not constitute a denial of due process. Lin was notified of the Hearing Panel decision on September 8, 1987. His attorney responded with a request for rehearing on September 23, 1987, but did not request documents. On October 7, the NYSE notified Lin of the November 19 hearing date. Lin waited until October 20 to send a request for documents, and then did not follow up on that request until November 13, knowing that the hearing was scheduled for November 19.Lin's Fn#7 Further, had Lin chosen to attend the September 3 hearing or participate in the investigation, he would have seen the evidence presented.Lin's Fn#8 The NYSE's delay in responding to his request for the evidence did not deny him due process.

Lin claims that he was denied an impartial forum because the SEC was acting on behalf of Merrill Lynch and Prudential to harass him. Lin provides no evidence for this assertion and it merits no further

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against Lin which NYSE knew that Lin never saw and which Lin repeatedly requested to see.

Lin's Fn#7 See Lin's Footnote #6.

Lin's Fn#8 This argument is specious. See Lin's Footnote #4.

discussion.[Lin's Fn#9] Lin asserts that the SEC was disqualified to adjudicate his appeal because it was a defendant in a civil suit filed by Lin. The SEC was not disqualified because of Lin's suit against it. See United States v. Studley, 783 P.2d 934, 940 (9th Cir. 1986) ("A judge is not disqualified by a litigant's suit or threatened suit against him.[Lin's Fn#a])

Lin argues that the SEC willfully removed 'crucial documents, and evidence from the record. Lin asserts that the SEC removed from the record exhibits filed in support of his December 31, 1987 affidavit. Lin has provided no evidence that these exhibits were ever submitted with the December 31, 1987 affidavit.[Lin's Fn#b]. The affidavit itself makes no mention of supporting exhibits. In the Motion submitted with the December 31, 1987 affidavit, Lin states that he is attaching his affidavit, a copy of his November 13, 1987 Memorandum with attachments, and a transcript of the meeting of the Committee for Review. The November 13 Memorandum states that the attachments are Lin's letters of October 5, 1987 and May 20, 1987, all of which were included in the record. Lin has thus provided no evidence that any additional exhibits were ever

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Lin's Fn#9 To the contrary, evidence on record and before the 9th Cir. proved Lin's claim that the SEC was so acting. In fact the SEC reluctantly admitted as much after the evidence became too overwhelming to deny.

Lin's Fn#a The issue was whether the SEC was capable of being neutral and impartial when its past conduct towards Lin clearly demonstrated otherwise.

Lin's Fn#b The evidence on record proved Lin's claim.

submitted with the December 31, 1987 affidavit.[Lin's Fn#c] Moreover, we have considered these documents, and even assuming their existence as part of the record, they do not show that the Commission's findings were unsupported by substantial evidence.[Lin's Fn#d]

Other claims were briefed but none merit discussion.

AFFIRMED.

Lin's Fn#c Not only were the additional exhibits provided, they were a integral and natural part of the submissions.

Lin's Fn#d In fact, the Commission's findings were not only unsupported, but actually directly refuted by the voluminous objective evidence remaining on record, despite the Commission's spoliation.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 27666 / February 1, 1990
Admin. Proc. File No. 3-6947
In the Matter of the Application of
WALLACE E. LIN
926 Mesa Oak Court
Sunnyvale, California

For Review of Disciplinary Action Taken by the
NEW YORK STOCK EXCHANGE, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE -- REVIEW OF DISCIPLINARY PROCEEDINGS
Violations of Exchange Rules
Unauthorized Transactions
Attempt to Conceal Unauthorized Transactions
Offer to Reimburse Losses
Misrepresentations to Customers
Refusal to Respond to Written Inquiries and to Testify

Where former registered representative of member firm of national securities exchange effected unauthorized transactions, attempted to conceal those transactions, offered customers reimbursement for their losses, made misrepresentations to customers, and refused to respond to written exchange inquiries and to testify, held, exchange's findings of violation and the sanctions it imposed, affirmed.

APPEARANCES:
Wallace E. Lin, pro se.
Charles Shanley, Jr., for the New York Stock Exchange, Inc.

I

Wallace E. Lin, a former registered representative of Prudential-Bache Securities, Inc., appeals from disciplinary action taken against him by the New York Stock Exchange. The Exchange censured Lin, fined him $10,000, and barred him for four years from membership, allied membership, approved person status, and employment or association in any capacity with a member or member organization. our findings are based on an independent review of the record.

II

The Exchange found that Lin effected unauthorized transactions in a joint customer account, [1/] attempted to conceal those transactions, improperly offered to reimburse the customers for losses, [2/] and made misrepresentations to the customers.Lin's Fn:1

1/ NYSE Rule 724(a) prohibits employees of a member organization from exercising discretionary power to trade option contracts in a customer's account without the customer's prior written authorization. 2 NYSE Guide SS 2724.

NYSE Rule 408(a) prohibits the exercise of discretionary power in a customer's account without the customer's prior written authorization. 2 NYSE Guide SS 2408.

2/ NYSE Rule 352(c) prohibits a registered representative from sharing or agreeing to share any losses in a customer's account. 2 NYSE Guide SS 2352.

Lin's Fn:1 Lin, while an employee at Exchange's prominent member, Prudential, protested against Prudential's various frauds against public customers. Prudential retaliated by constructively discharging Lin and Lin thereafter sued Prudential for wrongful termination. On September 3, 1987, without prior notice to Lin or his counsel, and using financially procured and fabricated "evidence" and trumped-up charges, the Exchange orchestrated a secret and unilateral "hearing" against Lin in retaliation against Lin for Lin's suit against its prominent member, Prudential. No

From October 1984 through February 1985, Lin effected about 63 opening transactions in index options in the joint account of his customers, Mr. and Mrs. Leung. On January 14, 1985, he purchased 80 U.S. Treasury bills for the Leungs' account and, on February 5, sold 40 bills for the account.[Lin's Fn:2] None of these transactions had been authorized by Mr. and Mrs. Leung, either orally or in writing.[Lin's Fn:3]

During the fall of 1984, Mrs. Leung noticed the option activity in her account and asked Lin why it was taking place. Lin replied that it "was nothing," and told her "not to worry."[Lin's Fn:4] However, in February 1985, he offered to reimburse the Leungs for the losses they had

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witness appeared or indeed was needed in this farcical unilateral "hearing" and Lin's earlier categorical denial of the trumped-up charges were deliberately suppressed to render the Exchange's predeterminations against him. The "findings" and the fabricated embellishments alleged here by the SEC are thus impermissible legal fiction, have no basis in fact, and are directly refuted by the evidence on record plus documentary proof from none other than Lin's accusers and Prudential.

Lin's Fn:2 Leungs' own monthly statements and documents from Prudential amply prove these embellishments false.

Lin's Fn:3 Lin merely followed the Leungs' instructions, although Prudential did create losing transactions in Leungs accounts that were artificial, unauthorized and totally avoidable. These fraudulent transactions and losses by Prudential were then falsely attributed to Lin.

Lin's Fn:4 The alleged conversation never took place and is factually impossible because prior to trading at Prudential, the Leungs were already extremely active and sophisticated options traders elsewhere and were doing exactly the same things they later continued to do at Prudential.

suffered as a result of his activities.Lin's Fn:5 Lin told the Leungs not to tell his branch manager at Prudential that he had effected unauthorized transactions, stating that, if they did disclose his activities, his employment would be terminated and he would not be able to reimburse them for their losses.Lin's Fn:6 Lin also falsely stated to Mr. and Mrs. Leung that the customer agreements they had signed when they opened their account conferred discretionary authority on him.Lin's Fn:7 Despite Lin's warning, Mrs. Leung informed Lin's branch manager of his unauthorized transactions. Lin then tried to get Mrs. Leung to withdraw her complaint, asking her to tell his branch manager that the complaint was the result of a misunderstanding that had now been resolved. Mrs. Leung did not comply with Lin's request and, on or about March 20, 1985, Prudential paid the Leungs $55,930 in settlement of their claims.Lin's Fn:8

Lin's Fn:5 This is factually impossible because Prudential had already reduced Lin's monthly salary from $8,000 to $900/month for two months in a row in retaliation against his protests against artificial transactions and loss creation in customer accounts to benefit Prudential's in-house trading accounts. Lin could not afford and did not want to continue working at Prudential when his monthly office overhead, at $1,000/month, already exceeded his reduced salary of $900/month.

Lin's Fn:6 This fabrication is refuted by facts. See Lin's Footnote:5, supra.

Lin's Fn:7 Lin, of course never said such a thing to anyone, much less the sophisticated and well-educated Leungs who were veteran traders with prior active trading experience in various brokerage firms.

Lin's Fn:8 The fact that Lin did not learn of Leungs' complaints or their nature and the payment of $55,930 by Prudential until long after he resigned in protest of Prudential's constructive and

Lin chose not to attend the hearing before the Exchange Hearing Panel in this matter, and did not present any evidence.Lin's Fn:9 The Exchange introduced into evidence the affidavits of Mr. and Mrs. Leung. Lin contends that the affidavits are perjured, and that the Leungs were induced to make false statements against him by the payment they received from Prudential. We find no support in the record for Lin's allegations, and no basis for discrediting the Leungs' affidavits.Lin's Fn:a 3/ We

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retaliatory discharge says much about the falsity of the foregoing embellishments.

Lin's Fn:9 Lin was never notified of the September 3, 1987 "hearing". See Lin's Footnote:1, supra.

Lin's Fn:a See Lin's foregoing Footnotes, which find Lin's claims amply supported and proved in the record.

3/ Lin seeks to introduce into evidence on review an affidavit setting forth his version of the events at issue. Rule 19d-3(e) under the Securities Exchange Act provides that respondents "shall be obliged to adduce all evidence that they deem relevant in the proceedings before the [Exchange]," and that additional evidence will not be accepted on appeal "unless (the respondent) shows to the satisfaction of the Commission ... that there were reasonable grounds for his failure to adduce such evidence" in the proceedings below. Lin has not made the requisite showing here. We accordingly deny his request to introduce the affidavit into evidence. Furthermore, even had Lin made the requisite showing under Rule 19d-3(e), Lin's affidavit does not alter our opinion in this matter. Lin's affidavit is largely conclusory, and, given its timing and the circumstances under which it was submitted, is somewhat suspect. By contrast, the affidavits submitted to the Exchange by the Leungs contain consistent and detailed factual accounts of the events giving rise to this proceeding.

accordingly affirm the Exchange's findings of violation against Lin in the respects set forth above. 4/

III

The Exchange found that Lin refused to comply with requests that he respond to written inquiries,Lin's Fn:b and that he refused to testify in the Exchange's investigation.Lin's Fn:c 5/ The relevant facts are as follows.

On three separate dates, August 19, September 13 and October 1, 1985, the Exchange sent Lin letters requesting that, within a specified number of days, he furnish a "detailed written explanation" of certain matters relating to his transactions for and dealings with the Leungs. The Exchange did not receive the requested explanation.Lin's Fn:d Instead, on October 30, Lin's attorney sent the Exchange a copy of a stay order entered by a California court on October 28, which stated that "all proceedings"

4/ Lin contends that the standard of proof in disciplinary proceedings is "convincing proof to a reasonable certainty." However, the proper standard is preponderance of the evidence. See Steadman v. SEC, 450 U.S. 91 (1981).

Lin's Fn:b Lin categorically denied all the trumped-up charges on May 20, 1987 and demanded assurances from NYSE that it was not in fact acting on behalf of membership interests such as that of Prudential.

Lin's Fn:c Not true. See Lin's Footnote:1, supra.

5/ See NYSE Rule 477. 2 NYSE Guide SS 2477.

Lin's Fn:d The most appropriate response to totally fabricated and trumped-up charges is to categorically deny them, as Lin did on May 20, 1987. See Lin's Footnote:b, supra.

before the Exchange were stayed.[Lin's Fn:e] That order, however, arose in the context of an action brought by Lin against Prudential for breach of his employment contract, and was issued in response to Lin's motion requesting "an order staying arbitration of a claim made by Defendant PRUDENTIAL-BACHE SECURITIES, INC. which arbitration is now pending before the New York Stock Exchange in San Francisco." The order itself recited that "the motion of plaintiff [Lin] to stay arbitration proceedings is granted and therefore all proceedings before the New York Stock Exchange are hereby stayed."[Lin's Fn:f] The Exchange was not a party to the civil action in which the order was entered. Accordingly, we believe it is clear that the court's stay order referred only to the pending arbitration proceedings, and was inapplicable to the Exchange's investigation.[Lin's Fn:g]

On August 27, 1986, the Exchange sent Lin's counsel a letter requesting that Lin appear for an "on-the-record interview" on September 23. By letter dated September 4, Lin's attorney notified the Exchange that he "[did] not intend to permit [his] client to be interviewed [by the Exchange] under any circumstances." Counsel further

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Lin's Fn:e The language "all proceedings" came about because Lin reported to the California Court that NYSE was acting on behalf of Prudential to retaliate against Lin's protests and suit against an Exchange member and the "all" was adopted and used by the Court in that context.

Lin's Fn:f See Lin's Fn:e, supra.

Lin's Fn:g A review of the California Court record will show that SEC's "belief" is erroneous as the Exchange, not to mention the SEC, was covertly acting as an agent of Prudential, a party to the suit. Moreover, Lin was in any event barred by the clear language of the California Court Order from participating in "all proceedings before the NYSE".

stated that the court order had the effect of staying the Exchange's investigation of Lin. On September 11, the Exchange replied that the stay order only related to the arbitration proceedings and was "irrelevant" to the Exchange's investigation. It further stated that Lin could be formally charged with failure to comply with its requests for information and that, unless he appeared for the scheduled interview or made other acceptable arrangements, he could also be charged with a failure to testify. Lin's counsel replied on September 18 that, at that time, his "client [did] not intend to participate in [the] investigation," which "smack[ed] of collusion" between the Exchange and Prudential.Lin's Fn:h

Lin never replied to the written requests for information.Lin;s Fn:i Nor did he appear at the Exchange for his scheduled interview. He claims that his actions were justified because the court order stayed "all proceedings" before the Exchange. However, as we have previously noted, that order only related to Prudential's arbitration proceeding, and had no bearing on the Exchange's investigation of Lin.Lin's Fn:j

We accordingly affirm the Exchange's findings of violation against Lin in the above respects.

Lin's Fn:h Particularly in light of the circumstances, including NYSE's refusal or inability to provide assurance to Lin or his counsel that NYSE was not in fact acting on behalf of Merrill or Prudential, its pillar members, against Lin.

Lin;s Fn:i There was no information to provide against trumped-up charges other than categorical denial which Lin had already given. See Lin's Footnote:d, supra.

Lin's Fn:j Not true. See Lin's Footnote:e and Footnote:g, supra.

IV.

Lin contends that the proceedings against him were invalid because they were conducted in defiance of the stay order entered by the California court. We have already concluded that the stay order was not applicable to the Exchange's disciplinary action against Lin. Even if it had been applicable, it was no longer in effect at the time of the Exchange hearing. A California appellate court reversed that order on June 10, 1987, almost three months prior to Lin's hearing before the Exchange's Hearing Panel, and the California Supreme Court declined to review the reversal order on September 2, 1987, shortly prior to that hearing.[Lin's Fn:k]

Lin further contends that he was denied a fair hearing. He asserts that he was not afforded the opportunity to appear and defend himself, and to confront the evidence against him. There is no justification for these claims. Lin received notice of the hearing, and had the opportunity to appear and defend himself, but did not avail himself of that opportunity.[Lin's Fn:l] His asserted justification for failing to appear at the hearing, the California stay order, did not provide any basis for that failure.[Lin's Fn:m] The record also shows that, shortly before Lin's scheduled hearing

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Lin's Fn:k See Lin's Footnote:1, supra. Moreover Lin could not have responded to the apparently hastily arranged unilateral and unnoticed "hearing" which took place, not coincidentally, on September 3, 1987, the day after California Supreme Court's September 2, 1987 decision declining review, and several days before Lin or his counsel learned for the first time by mail of said California Supreme Court's decision.

Lin's Fn:l This is patently false. See Lin's Footnote:1, supra. Also Lin's Footnote:e and Footnote:g.

Lin's Fn:m Note true. See Lin's Footnote:1, supra, and Lin's Footnote:e and Lin's Footnote:g, supra.

before the Review Committee of the Exchange's Board of Directors, the Exchange, in response to Lin's request, sent him copies of all of the materials in the record that he did not already have. There is no support in the record for Lin's additional claim that he did not obtain a fair hearing because the Exchange was biased against him.Lin's Fn:n 6/

Lin makes various other charges against the Exchange. He asserts, among other things, that the Exchange engaged in a "conspiracy and collusion" with Prudential to convict him on "fabricated evidence," and that the disciplinary proceedings against him were instituted at Prudential's request to "upstage" his court action against Prudential and pressure him into dropping that action. However, the record lends no support to these claims.Lin's Fn:o 7/

Lin's Fn:n In addition to the record below and Lin's Footnotes here demonstrating NYSE's conspiracy and collusion with Prudential and the SEC against Lin, even the purported evidence against Lin was withheld from Lin by the NYSE despite Lin's repeated demands to see it and until after the 12th hour.

6/ Lin also argues that the proceedings against him were invalid because the Exchange did not comply with his request for certain "assurances and agreements" relating to those proceedings. However, Lin could not require the Exchange to accept terms and conditions in addition to those to which he was already entitled. Nor does the record support his claim that the Exchange discriminated against him on account of his race. Contrary to Lin's further contention, nothing in the Ethics in Government Act of 1978 disqualifies a former member of the Commission from serving as chairperson on the Review Committee of the Exchange's Board of Directors which considered Lin's appeal.

Lin's Fn:o To the contrary, the record fully support such claims and Lin's counsel, upon review of the evidence and record, concluded likewise.

V.

Lin asserts that the sanctions imposed on him are too severe. we do not agree. Lin effected unauthorized transactions, attempted to conceal them, and lied to his customers.Lin's Fn:p In addition, he refused, without justification, to cooperate with the Exchange in connection with its investigationLin's Fn:q . Both the investing public and the brokerage community must be protected from those who both abuse the trust and confidence placed in them and

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7/ Rule 19d-3(b) under the Securities Exchange Act provides that, within 10 days after it receives a copy of an application for review filed with this Commission, the Exchange must file with us a certified copy of the record below and an index to that record. Lin asserts that the Exchange did not file the required documents, or supply him with the certified record, within the prescribed 10 days. It appears that the Exchange received Lin's application on January 19, 1988, but did not file the record and index with us until February 9. Although there was not strict compliance with the rule, its purpose is to aid the Commission's processes, and Lin was not harmed or prejudiced by this procedural error. Cf. James F. Novak, 47 S.E.C. 892, 898 n. 24 (1983). Moreover, contrary to Lin's contention, Rule 19d-3 did not require the Exchange to supply him with the certified record of the proceedings below.

Finally, Lin's request that we award him monetary damages against the Exchange is denied. we have no authority to award such damages.

Lin's Fn:p If Lin did do such outrageous things, then the sanctions may well be justified. But the crux and miscarriage of justice in this matter is that Lin did none of these things and was totally innocent.

Lin's Fn:q See Lin's Footnote:1, Footnote:b, Footnote:d; Footnote:e, Footnote:g, Footnote:h, and Footnote:k

impede the investigation of their misconduct.Lin's Fn:r We accordingly find the sanctions imposed by the Exchange fully warranted.

An appropriate order will issue. 8/

By the Commission (Chairman BREEDEN and Commissioners FLEISCHMAN and SCHAPIRO).

Jonathan G. Katz
Secretary

Lin's Fn:r Lin completely agrees with the SEC's pious and hypocritical statement here which the SEC failed totally to live up to. When Lin provided the SEC with voluminous and irrefutable documentary evidence of Merrill and Prudential's racketeering frauds, the agency refused to investigate, prevent, stop or remedy the wrongs so as to cover up and delay on the one hand, while knowingly and actively received false and bogus "evidence" from Prudential and Merrill to persecute Lin in the guise of "investigation" on the other.

8/ All of the contentions advanced by Lin and the Exchange have been considered. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 27666 / February 1, 1990

Admin. Proc. File No. 3-6947

In the Matter of the Application of
WALLACE E. LIN
926 Mesa Oak Court
Sunnyvale, California

For Review of Disciplinary Action Taken by the
NEW YORK STOCK EXCHANGE, INC.

ORDER AFFIRMING DISCIPLINARY ACTION
TAKEN BY NATIONAL SECURITIES EXCHANGE

on the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the New York Stock Exchange, Inc. against Wallace E. Lin be, and it hereby is, affirmed.

By the commission.

Jonathan G. Katz,
Secretary